

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY STITH,

Plaintiff,

CV F 05 0023 AWI WMW P

vs.

_____ FINDING AND RECOMMENDATION

HARREL WATTS, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se in this civil rights action. On October 4, 2006, an order was entered by the District Court, adopting the September 18, 2006, findings and recommendations.

The October 4, 2006, order granted Defendants' motion to dismiss and granted Plaintiff leave to file an amended complaint. The order cautioned Plaintiff that failure to file an amended complaint would result in this action's dismissal. On November 22, 2006, Plaintiff was granted a thirty day extension of time in which to file an amended complaint. Plaintiff has failed to file an amended complaint. Because Plaintiff has not filed an amended complaint, the court recommends dismissal of the claims made in the original complaint with prejudice for failure to state a federal claim upon which the court could grant relief. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9th Cir. 1987) (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing for failure to state a claim).

1 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for
2 failure to state a claim upon which relief can be granted.

3 These findings and recommendations are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within
5 twenty days after being served with these findings and recommendations, plaintiff may file
6 written objections with the court. Such a document should be captioned "Objections to
7 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
8 objections within the specified time waives all objections to the judge's findings of fact. See
9 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). Failure to file objections within the
10 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
11 F.2d 1153 (9th Cir. 1991).

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16 IT IS SO ORDERED.

17 **Dated: January 11, 2007**
18 **j14hj0**

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE